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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF ARIZONA

7 United States of America,)
8 Plaintiff,) No. 09-382-M
9 vs.)
10 Lucindo Diaz-Hernandez,)
11 Defendant.)
12 _____)

ORDER

13 Having considered the Parties' Joint Motion to allow the government additional time
14 under the Speedy Trial Act to file an indictment, the Court finds that the ends of justice served
15 by granting the extension outweigh the best interest of the public and the defendant in a speedy
16 trial. 18 U.S.C. § 3161(h)(8)(A).

17 In making this finding, the Court has considered each of the factors specified in 18
18 U.S.C. § 3161(h)(8)(B). In addition, the Court has considered the following:

- 19 1. Counsel has only recently been appointed;
- 20 2. The defendant wishes to consider the plea offer extended by the
21 government;
- 22 3. The defendant wishes to investigate possible defenses prior to
23 considering the government's plea offer, which is made pursuant to
24 a "fast track" early disposition program authorized by the
Department of Justice pursuant to § 401(m) of the Prosecuting
Remedies and Tools Against the Exploitation of Children Today
Act of 2003 (PROTECT Act), Pub. L. 108-21, 117 Stat. 650 (Apr.
30, 2003);
- 25 4. The government's plea offer, if accepted by the defendant and then
the court, would likely reduce defendant's exposure to a significant
term of imprisonment;
- 26 5. If the defendant does not timely accept the plea offer prior to
indictment, the government will withdraw said plea offer and any
subsequent plea offer after indictment would likely be less
advantageous to the defendant;

6. Failure to extend time for indictment in this instance would thus operate to bar defendant from reviewing the government's plea offer in a meaningful way prior to indictment; and
 7. Granting an extension of time for indictment in this case is likely to result in the case being resolved earlier, which would further the public's interest in the timely and efficient administration of justice; and
 8. The ends of justice served by this continuance outweigh the best interest of the public and the defendant in a speedy indictment.

The Court therefore concludes that the ends of justice are best served by granting an extension of time to present the case to the grand jury and in excluding a period of thirty (30) days under the Speedy Trial Act. In making this determination, the Court has particularly taken into account that the failure to grant the defendant's request "would deny counsel for the defendant. . .the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." 18 U.S.C. § 3161(h)(8)(B)(iv).

13 **IT IS ORDERED** that the Joint Motion to Extend Time to Indict (Doc. #2), requesting
14 an extension of thirty (30) days within which the government may seek to indict defendant, is
15 hereby granted.

16 **IT IS FURTHER ORDERED** that pursuant to the Speedy Trial Act, 18 U.S.C. § 3161,
17 the Government shall have an extension of thirty (30) days to file a timely Indictment.
18 Excludable time shall begin to run on the 31st day after arrest for a period of thirty (30) days
19 in which the government may present the case to the grand jury.

DATED this 4th day of August, 2009.

Michelle H. Burns

Michelle H. Burns
United States Magistrate Judge